

REMARKS

It is noted that the Examiner has withdrawn the previously made rejection of the currently pending claims as either being anticipated by McNabb, U. S. Patent No. 6,289,462 or as being obvious over McNabb in view of "HP Virtualvault Trusted Web-Server Platform Product Brief".

While the Examiner has withdrawn that rejection, the Examiner has made a new rejection, now rejecting Claims 1-6, 14, 26, 29 and 31 under 35 U.S.C. 103 as allegedly being unpatentable over McNabb in view of England (U. S. Patent No. 6,327,652). This grounds for rejection is respectfully traversed.

In the Official Action, the Examiner asserts that McNabb shows certain features and that England shows other features and then concludes that "it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the method of McNabb to incorporate levels of trust as taught by England, in order to guarantee the ability to distinguish between trusted and non-trusted systems executing on the same computer...".

With all due respect, the Applicant disagrees.

A person skilled in the art who was familiar with McNabb and with England would not jump to the conclusion made the Examiner. England teaches otherwise. England tells the reader that digital rights management is fast becoming an essential requirement online commerce (see column 2, lines 10 – 12). England tells the reader that content providers may refuse to deliver viable online content unless there are "technologies and protocols for ensuring that digital content is properly handled in the accordance with the rights granted by the publisher." See column 2, lines 12 – 15.

England then goes on to tell the reader that traditional security systems ill serve this problem. See England, column 2, line 18. England reports that there are highly secure schemes for encrypting data in networks, authenticating users, revoking certificates and storing data securely. However, England tells the reader that none of these systems address the assurance of content security after it has been delivered to a client's machine. See, for example, England, column 2, lines 10-25.

England then goes on tell the reader that there are three (3) solutions to the problem. One is to use tamper resistant boxes, a second is to use secret, propriety data formats while the third is to follow the teachings of England.

England seems to say traditional security systems, such as those taught by McNabb, do not fill the bill as far as trying to convince content providers to allow their viable digital content to be downloaded to a client's machine.

Assuming that a person skilled in the art would read the prior references cited by the Examiner, why would a person skilled in the art try to combine England and McNabb? Why go with a traditional scheme such as that offered by McNabb when England tells the reader that there is a better solution?

The Examiner has failed to make a Prima Facie case of obviousness. As set forth in MPEP Section 2143:

“To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.”

The Examiner's rejection fails to meet these tests.

First, here is no motivation in the prior art that the Examiner has pointed to.

Second, there is no reasonable expectation that a person of ordinary skill could combine the references in any meaningful way. Even if a person of ordinary skill were motivated by the prior art to make the suggested combination, what, exactly, would the resulting operating system look like and would it be within the skill of a person of ordinary skill in the art to make an operating system based on such a combination? Exactly what elements disclosed in McNabb are supposed to be combined with exactly what elements in England and then why is a person skilled in the art supposed to have been motivated to make that combination?

Third, the suggested combination fails to anticipate the claims. The Examiner's analysis, with all due respect, pretty much ignores the language of the Claims.

Consider, for example, in Claim 1 which recites, *inter alia*, "the requestor providing a specification of the service to be performed to the computing platform, wherein the specification of service establishes specified levels of trust for at least one of the processes in the service..."

How is that suggested by either England or McNabb or any reasonable combination of the two? The Examiner points to column 19, line 55 through column 20, line 2 of McNabb as supposedly being pertinent to that limitation. However, in setting forth the rejection, the Examiner tries to substitute McNabb's sensitivity levels for England's trust levels. Why do that, especially considering that fact that they are not the same thing. The trust levels in England have to do with convincing a content provider to make digital content available, and not with the content provider trying to run some service on McNabb's computer! Where is there a "requestor providing a specification of the service to be performed to the computing platform" in England? And if there is no such requestor in England, then why try to marry England and McNabb? In the passage noted

by the Examiner in McNabb, the sensitivity levels are concerned with the access rights of users. Note the discussion about “user accessing the system with a particular sensitivity level will be directed to a **different process or data file**.” See column 19, lines 57 – 59. How and why is the reader motivated to change that based on England? Digital rights management is concerned with that happens to a digital file after it has been downloaded. Recall that England tells the reader that content providers may refuse to deliver viable online content unless there are “technologies and protocols for ensuring that digital content is properly handled in the accordance with the rights granted by the publisher.” See column 2, lines 12 – 15 of England. England wants to make sure that “downloaded content can be protected from unauthorized access.” See column 2, lines 30 – 31. McNabb is concerned with such things as controlling user access to a word processor program, for example, running on a server (note the passage noted above and cited by the Examiner).

It is noted that the Examiner’s cites McNabb “in view of England in making the rejection.” Thus, the Examiner seems to confer more importance on McNabb than on England. But to fair, a person of ordinary skill in the art who is presented with these two references would not know beforehand that one might be more important than the other when combining them, other than by the information presented in these documents. Since England seems to suggest **not** using traditional security systems, which it is submitted that McNabb falls into, it is submitted that a person of ordinary skill in the art would not try to combine these two references at all and certainly would not be motivated to come up the hindsight combination proposed by the Examiner.

Moreover, even if it were both reasonable and possible to combine these two references in some logical fashion, it is submitted that the combination would not anticipate Claim 1 for the reasons already discussed.

Finally, the Applicant wishes to express an objection to the manner which this Application is being examined. M.P.E.P. §707.07(a) and §707.07(g) caution the Examiner against engaging in piecemeal examination of Patent Applications. In this

case, as the Examiner acknowledges in the Official Action, that both England and McNabb were cited in the Official Action dated February 2, 2005. However, if McNabb in view of England were the best rejection the Examiner can make, then the Examiner had the obligation to make that the rejection in the February 2, 2005 Official Action and certainly by the time the Official Action of July 25, 2005 issued as opposed to waiting until now to make that rejection. The prosecution of Patent Applications is an expensive proposition and delaying making rejections only tends to make it more so.

Reconsideration of the Application is respectfully submitted.

Withdrawal of the rejections and allowance of the claims are respectfully requested.

The Commissioner is authorized to charge any additional fees which may be required or credit overpayment to deposit account no. 08-2125. In particular, if this response is not timely filed, then the Commissioner is authorized to treat this response as including a petition to extend the time period pursuant to 37 CFR 1.136 (a) requesting an extension of time of the number of months necessary to make this response timely filed and the petition fee due in connection therewith may be charged to deposit account no. 08-2125.

I hereby certify that this correspondence is being deposited with the United States Post Office with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on

APRIL 4, 2006

(Date of Transmission)

Esther Hayes

(Name of Person Transmitting)

(Signature)

APRIL 4, 2006

(Date)

Respectfully submitted,



Richard P. Berg
Attorney for the Applicant
Reg. No. 28,145
LADAS & PARRY
5670 Wilshire Boulevard,
Suite 2100
Los Angeles, California 90036
(323) 934-2300 voice
(323) 934-0202 facsimile